

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

INVENTURE FOODS, INC.

and

Case 25-CA-180283

STEVEN ESPY

ORDER

The Employer's Petition to Revoke subpoena duces tecum B-1-TFCBTP is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.¹

¹ In considering the petition to revoke, we have evaluated the subpoena in light of the Region's withdrawal of paragraphs 1 and 2 due to the Employer's subsequent submission of a commerce questionnaire, and the Region's statement that it has informed the Employer that it is willing to limit the scope of its requests to the Employer's facility in Bluffton, Indiana. Contrary to our dissenting colleague's assumption, the Region's offer to limit the scope of the subpoena does not establish that the subpoena initially was overbroad, and we find that it was not. Rather, the Region's modifications appear merely to promote efficiency and provide further clarity to the parties. Last, we observe that in this case the Employer did not engage with the Region at all before the issuance of the subpoena, raising geographic scope issues for the first time in its petition to revoke.

Acting Chairman Miscimarra would grant the petition to revoke as to paragraph 7 (requesting "[a]ll handbooks or other documents which set forth the Employer's employment policies at any time during the period covered by this subpoena") except for those handbook provisions that reasonably relate to the charge allegations regarding unlawful discipline and termination. See *Allied Waste Services of Massachusetts, LLC*, Cases 01-CA-123082, -126843 (Dec. 31, 2014). Additionally, Acting Chairman Miscimarra respectfully dissents from the Board majority's denial of the petition to revoke as to requests that encompass locations other than Bluffton, Indiana. When subpoena requests are overly broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party's petition to revoke raises appropriate objections to the requests on that basis, Acting Chairman Miscimarra believes it is more appropriate for the Board to *grant* the petition to

See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., January 25, 2017.

PHILIP A. MISCIMARRA,	ACTING CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

revoke as to such requests, rather than denying the petition to revoke (as the Board majority does here) based on a change that was communicated only after the petition to revoke is under consideration by the Board. See Sec. 11(1) (stating the Board “shall revoke” any subpoena where “the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required”). Regarding the majority’s statement that the Region’s geographic clarification served “merely to promote efficiency and provide further clarity to the parties,” he believes these efforts must be undertaken before disputes regarding a subpoena’s scope are presented to the Board in a party’s petition to revoke. Although his colleagues fault the Employer for failing to engage the Region before the issuance of the subpoena, Acting Chairman Miscimarra believes that whether or what type of informal exchanges may have occurred before this subpoena’s issuance is unrelated to the appropriate scope of the subpoena request; and the appropriate scope of subpoena requests should be addressed by the Region in the first instance when crafting the subpoena. Finally, Acting Chairman Miscimarra believes that granting a petition to revoke in the circumstances presented here would be without prejudice to the potential issuance of a new subpoena that is appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board’s Rules and Regulations).